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September 20, 2010

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MARK R. MILLER

Attn: Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, D.C. 20423-0001

SEP 21 2010
RECEIVED

227832

RE: Portland & Western Railroad, Inc. – Petition for Declaratory Order-
Certain Rates & Practices as Applied to RK Storage & Warehousing,
Inc.

STB Docket No. FD35406

Dear Chief:

Please find enclosed an original and ten (10) copies of Portland & Western Railroad, Inc.'s Response to RK Storage & Warehousing, Inc.'s Motion for Extension of Time to File Reply.

Should you have any questions, please do not hesitate to contact me. A copy has been provided to opposing counsel.

Sincerely,


P. Campbell Ford

Enclosures/

C: Larry Davidson
Timothy J. Coleman

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Office of Proceedings

SEP 21 2010

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD35406

SEP 21 2010
10:10 AM

**PORTLAND & WESTERN RAILROAD, INC.- PETITION FOR
DECLARATORY ORDER- CERTAIN RATES AND PRACTICES AS APPLIED
TO RK STORAGE & WAREHOUSING, INC.**

RESPONSE TO MOTION FOR EXTENSION OF TIME TO FILE REPLY

**SUBMITTED ON BEHALF OF PORTLAND & WESTERN
RAILROAD, INC. BY**

P. Campbell Ford, Esquire

Florida Bar No. 0480495

Alison Tedrick, Esquire

Florida Bar No. 0584967

Ford, Miller, and Wainer, P.A.

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD35406

**PORTLAND & WESTERN RAILROAD, INC.- PETITION FOR
DECLARATORY ORDER- CERTAIN RATES AND PRACTICES AS APPLIED
TO RK STORAGE & WAREHOUSING, INC.**

RESPONSE TO MOTION FOR EXTENSION OF TIME TO FILE REPLY

RK Storage & Warehousing, Inc. ("RK Storage") has filed a motion seeking a two-month extension of time to file a response to Portland & Western Railroad, Inc.'s Petition for Declaratory Order ("Petition"). In all, such an extension would provide RK Storage with approximately eighty (80) days to respond to the Petition, which as discussed below, is not necessary and simply another tactic to delay paying the long overdue demurrage owed to PNWR.

RK Storage asserts two (2) reasons for requesting the extension: 1) to review and respond to the 875 pages of materials in the Petition, and 2) to allow time for discovery, neither of which have merit.

First, RK Storage exaggerates the amount of material with which it must familiarize itself. Exhibits 1 through 7 of Volume 1 are pleadings that RK Storage drafted or responded to, and the remaining exhibits in Volume 1 (332 pages) the same records attached to the affidavits in Volume 2. PNWR simply organized the records this way for ease of reference for the Surface Transportation Board. Realistically, there is only a 28-page Petition and one volume of documents for RK Storage to review, and RK Storage has already seen many of these documents. PNWR acknowledges that reviewing the service records may require additional time, hence PNWR's willingness to

accommodate RK Storage by providing it with an additional twenty (20) days (for a total of 40 days) with which to respond. Said review, however, certainly does not require eighty (80) days and does not warrant such an extension.

RK Storage notes that it took several months for PNWR to file the subject Petition. This is true. Unlike RK Storage, which is admittedly in one location and presumably with all of its documents in one location, PNWR is part of Genesee & Wyoming, Inc. and has offices and documents located all over the country. PNWR wanted to make sure that it located and attached to the Petition all documents to the extent possible that are pertinent to the subject Petition. This is true even as to RK Storage's Counterclaim, which it now acknowledges in its Motion for Extension it has abandoned.¹ In summary, while it did take PNWR a while to locate the necessary documents, PNWR has also provided a roadmap to RK Storage in its Petition, highlighting the issues and the documents evidencing same. All RK Storage must do is respond, and certainly since it has refused to pay its demurrage obligations for more than four (4) years, it does not take eighty (80) days to explain why.

Further, no discovery is necessary as all of the documents relevant to the service provided to RK Storage and demurrage charged have been provided as exhibits to the Petition. This was already communicated to RK Storage's counsel. ***See email exchange attached hereto as Exhibit "A".***

RK Storage claims that PNWR has not furnished all of the documents provided

¹ In the civil action, RK Storage requested "storage fees" for the time empty railcars remained on its track prior to the ability of PNWR to pick up the railcars. Such fees would serve as an offset to the demurrage long overdue to PNWR and would naturally require additional time to address in litigation, thus delaying its payment of demurrage to PNWR. When faced with the fact that it would be required to present such a bogus and admittedly retaliatory claim to the Surface Transportation Board, the expert on rail transportation and demurrage, RK Storage quickly abandoned its request.

by it to PNWR. Needless to say, RK Storage itself, as the source of all of these documents, is the better-suited party from which to obtain these documents. Regardless, PNWR has attached to the Petition all and any relevant documents received from RK Storage that it could locate. RK Storage also claims that PNWR has not furnished the names of all persons with knowledge regarding this matter. Counsel for PNWR had a difficult time locating the appropriate parties with knowledge of these matters itself due to turnover, lack of forwarding information, and offices scattered throughout the country, but the names of those with the most knowledge and/or who provided documents are identified through the affidavits contained in Volume 2 of the Petition. The fact of the matter is that RK Storage simply does not like the records produced and is only attempting to continue delaying the inevitable- paying demurrage to PNWR.

The same motive is shown by RK Storage's allegation that discovery is necessary due to the "new allegations raised for the first time by PNWR in its petition, e.g. defective track allegedly maintained by RK." RK Storage's failure to properly maintain its track is not a new issue, and in fact one about which RK Storage previously communicated with PNWR, as evidenced by some of the documents attached to the Petition.

In summary, while RK Storage may need a reasonable amount of additional time to respond to the Petition, a total of eighty (80) days to respond is certainly not warranted, especially considering RK Storage has been aware of its nonpayment and all of the issues raised in the Petition for more than four (4) years. As such, the Surface Transportation Board should deny RK Storage's request for a two-month extension.

VERIFICATION

I, P. Campbell Ford, declare under penalty of perjury that the foregoing is true and correct and that that I am qualified and authorized to file this pleading. Executed on September 20, 2010.



P. Campbell Ford, Esquire

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, D.C. 20423-0001, via United Parcel Service, Timothy Coleman, Esquire (*local counsel for Petitioner*), 805 S.W. Broadway, 8th Floor, Portland, Oregon 97205 via first class mail, and Larry Davidson, Esquire (*counsel for Respondent*), 1850 Benjamin Franklin Plaza, One SW Columbia Street, Portland, Oregon 97258 via United Parcel Service, this 20th day of September 2010.



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Florida Bar No. 0480495

Alison Tedrick, Esquire

Florida Bar No. 0584967

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Attorney for Portland & Western
Railroad, Inc.

All Tedrick

From: ali@fordmiller.com
 Sent: Wednesday, September 15, 2010 2:37 PM
 To: Larry Davidson
 Cc: Campbell Ford
 Subject: RE: Demurrage charges

Mr. Davidson

In comparing the documents that RK Storage requested with what PNWR has provided it with the petition to the Surface Transportation Board, I believe PNWR has provided all documents that it has that are relevant to this matter. As to the 12 requests, PNWR provided in its Petition to the STB:

- The switching, spotting, placement records (Requests 2-3)
- The correspondence between RK Storage & PNWR (that our clients could find) related to switching, spotting, etc. (Req. 4-5). I did ask our client for all correspondence between PNWR and RK Storage. It is my understanding that most communications were oral. I believe the correspondence that PNWR forwarded to me (which was not much), was attached to the Petition. I can double check to see if I overlooked any.
- The payments by RK Storage (Req. 7)
- The applicable tariffs (Req. 9)
- We have provided all other applicable docs pertaining to switching, spotting, placement that we have (Req. 10)
- There are no written contracts between the parties (Req. 11)

Request 1- Because there has been so much turn over with engine crews, inability to locate crew members no longer working there, etc., we identified all of the people who we learned of that had any knowledge of the spotting, placement, switching service provided to RK Storage, and identified anyone who had documents related to the service (and we've attached those documents). These people referenced in the Petition are the major payers, the witnesses with the most knowledge, and the ones who had documents. Example- Todd Vincent who is the only crewmember that we know of who has been there the entire time and has worked in every position related to the service provided to RK Storage (conductor, engineer, road foreman, and now, trainmaster).

As to the rest of the requests (6, 8, and 12), we don't believe they are relevant to the damages PNWR is seeking and/or to RK Storage.

Please let us know if you have any further thoughts on this matter.

Thanks

Ali

From: Larry Davidson (mailto:larry@rollin-on.com)
 Sent: Wednesday, September 15, 2010 2:03 PM
 To: Campbell Ford
 Cc: Ali Tedrick
 Subject: Re: Demurrage charges

See attached. There are 12 requests. Some are clearly lacking, e.g. #1 regarding witnesses, #4 regarding documents received from RK, #11 contracts.

As for other requests, there is no verification that all responsive documents have been produced.
 Larry

On 9/15/2010 7:57 AM, Campbell Ford wrote:

Larry
 I would also note we have provided you everything in our possession that is relevant. If you are missing anything, let me know specifically so we can address it.

Campbell

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From: Larry Davidson (mailto:larry@rollin-on.com)
 Sent: Wednesday, September 15, 2010 10:31 AM
 To: Campbell Ford
 Cc: Ali Tedrick
 Subject: Re: Demurrage charges

I sent you a response yesterday. If I don't hear from you by 3:00 PM today, I will that assume you still oppose our request for extension.
 Larry

On 9/14/2010 7:00 AM, Campbell Ford wrote:

Larry
 I would also note that we gave you everything, which is further reason to believe that this is merely for delay. On the other hand, your client has made a lot of empty claims and we have seen little documentation in response. You will need to explain this to the STB as we will be making this argument. Again, if you would

like to further explain it we would be glad to listen and give our response instead of hearing any substantive arguments for the first time on Motion

Campbell

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From: Larry Davidson [mailto:larry@rollm-on.com]
Sent: Monday, September 13, 2010 6:45 PM
To: Campbell Ford
Cc: Ali Tednick
Subject: Re: Demurrage charges

Campbell

I'm going to ask for an extension of time to respond, based upon the short response time allowed by rule, and to do some discovery. I'm thinking a three month extension. Please let me know if you oppose or agree to the motion.
Larry

On 4/23/2010 7:44 AM, Campbell Ford wrote:

Larry
I did not hear from you so we are proceeding forward

Campbell

P. Campbell Ford, Esq
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From: Larry Davidson [mailto:larry@rollm-on.com]
Sent: Friday, April 16, 2010 5:01 PM
To: Campbell Ford
Subject: Demurrage charges

Campbell

Thank you for your email confirming that the settlement offer from your client equals the demand. I will pass your letter along to my client.

Regards
Larry

On 4/16/2010 9:25 AM, Campbell Ford wrote:

Larry
The total demand by Portland & Western is confirmed as you requested. Let me know by Wednesday of any offer. We will move forward as indicated if there is no offer. Spending more fees appears senseless at this point but we will if we have to as the Railroad is serious about this claim and will press the collection efforts on any Judgment entered.

Campbell

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